

From: [Melissa Smith](#)
To: [Sunita Singhvi](#); [Ragan Broyles](#); [Laurie King](#); [troy hill](#)
Subject: FYI - DOJ's e-mail to the TX AG's office on the Grand Prairie fact sheet
Date: 08/19/2009 03:20 PM
Importance: High

FYI - DOJ has the raised the issue of the Health Dept's fact sheet to the AG's office.

----- Forwarded by Melissa Smith/R6/USEPA/US on 08/19/2009 03:17 PM -----

RE: Delfasco - Term Sheet

Donnellan, Michael to: Abby Ryan, Hal Morris
(ENRD)

08/19/2009
01:47 PM

Cc: Barbara Nann, Rebekah Reynolds, "Tenenbaum, Alan (ENRD)"

Hal and Abby,
I am corrected that it is Texas Department of State Health Services, not TCEQ, that is issuing the fact sheet.
I apologize for the confusion.
Michael

> -----Original Message-----
> From: Donnellan, Michael (ENRD)
> Sent: Wednesday, August 19, 2009 2:30 PM
> To: 'Abby Ryan'; Hal Morris
> Cc: Nann.Barbara@epamail.epa.gov; Reynolds.Rebekah@epamail.epa.gov; Tenenbaum, Alan (ENRD)
> Subject: RE: Delfasco - Term Sheet
>
> Abby and Hal,
>
> I am still waiting for the information on the plan.
>
> Meanwhile, a new, related issue has come up.
> Apparently, TCEQ plans to issue a Fact Sheet related to the Delfasco Site and to finalize it within the next week.
> The draft of the Fact Sheet that we saw was drafted as if it would be issued jointly by the US and TX.
> EPA reviewed the draft and had substantial concerns.
> Chief among those concerns was TCEQ's statement TCE levels in indoor air were "lower than those known to affect people's health."
> EPA discussed those concerns with TCEQ.
> In my not necessarily accurate understanding, TCEQ's statements may related to its conclusion that acute, short term impacts are not expected from the levels of TCE detected in indoor air. It appears TCEQ did not include long-term carcinogenic risk in its considerations. EPA's determination that the site presents an imminent and substantial endangerment was based on long-term, carcinogenic risks. Nothing in

the draft that I saw
> made the distinction b/t EPA's conclusions and TCEQ's conclusions
clear.
> As I understand it, the end result of EPA's discussions with TCEQ is
that TCEQ plans to
> issue the fact sheet under its own name only and will not show any
additional drafts to
> EPA.
> I am alerting you to this for several reasons:
> 1. Depending on what the final draft says, it has the
potential to impact TX's
> claims under the VCP.
> 2. Even though the US will not be issuing the fact sheet,
any government issued
> determination that there is no threat at the Site has the potential to
impact the United States
> claims under RCRA Section 7003.
> 3. The potential for inconsistent fact sheets issued by
TCEQ and EPA seems
> like a bad idea.
> At this point, we don't know what the final draft will say and TCEQ
has said we will not
> have the opportunity to review it before it is issued.
> I think the best thing would be an accurate fact sheet that specified
the types of health
> threats that TCEQ concluded were not present and made clear the types
of health threats
> which it did not consider.
> I would be happy to discuss this further with you.
>
> Michael
>
> Michael T. Donnellan
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>
> > -----Original Message-----
> > From: Abby Ryan [mailto:Abigail.Rushing@oag.state.tx.us]
> > Sent: Monday, August 17, 2009 1:11 PM
> > To: Donnellan, Michael (ENRD)
> > Cc: Nann.Barbara@epamail.epa.gov; Reynolds.Rebekah@epamail.epa.gov;
Hal Morris;
> > Tenenbaum, Alan (ENRD)
> > Subject: RE: Delfasco - Term Sheet

> >
> > Good afternoon, Michael:
> >
> > Following up on our email exchange, below, when may Hal and I expect
a > term sheet of the settlement/plan?
> >
> > Thank you for your anticipated courtesies in this matter -
> >
> > Abby Ryan
> >
> > Abigail R. Ryan
> > Assistant Attorney General
> > Bankruptcy & Collections Div.
> > Office of The Texas Attorney General
> > (direct dial) 512-475-4933
> > (fax) 512-482-8341
> > abigail.rushing@oag.state.tx.us
> >
> > >>> "Donnellan, Michael (ENRD)" <Michael.Donnellan@usdoj.gov>
Monday,
> > August 03, 2009 5:46 PM >>>
> > Abby,
> >
> > Thanks for your email.
> > If I understood correctly, Hal was looking for a description of the
> > agreed settlement plus an outline of the terms of the proposed plan.
> > At this point, our efforts to reduce the settlement in principle to
> > writing have gone more slowly than I would have like.
> > We are close, but not quite there.
> > Furthermore, since the settlement in principle does not include the
> > terms of the plan, I don't yet have all the information Hal was
> > looking
> > for.
> > I will contact counsel for the Debtor and the Committee tomorrow and
> > try
> > to reinvigorate the efforts to get the information Hal requested.
> >
> > As you are aware, since our last discussion, the District Court
> > granted
> > the Motion for Mandatory Withdrawal of Reference.
> > The District Court followed up with an Order requiring submission of
a > Joint Proposed Scheduling Order by today.
> > In lieu of a proposed Scheduling Order, the US and Delfasco
submitted
> > (about ten minutes ago) a Joint Stipulation requesting a stay of the
> > requirement to submit a scheduling order.
> > For your convenience, a copy of that filing is attached.
> > The underlying rationale for the requested stay was the idea that
our
> > resources would be better focused on attempting to finalize a
> > settlement.
> > We acknowledged to the District Court that Texas has expressed
> > concerns.
> >
> > I will update you soon on the status of my efforts to collect the
> > information Hal requested.
> >
> > Thanks,
> >
> > Michael
> >
> >
> > Michael T. Donnellan
> > Senior Attorney
> > Environmental Enforcement Section
> > Environment and Natural Resources Division
> > U.S. Department of Justice
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> >
> > > -----Original Message-----
> > > From: Abby Ryan [mailto:Abigail.Rushing@oag.state.tx.us]
> > > Sent: Monday, August 03, 2009 6:09 PM
> > > To: Donnellan, Michael (ENRD)
> > > Cc: Hal Morris; Tenenbaum, Alan (ENRD)
> > > Subject: Delfasco - Term Sheet
> > >
> > > Good afternoon, Michael:
> > >
> > > This email is following up on the discussion that we had a few
weeks
> > > ago wherein you indicated you would provide Hal and me with a term
> > > sheet
> > > for DOJ's/EPA's/Delfasco's settlement proposal.
> > >
> > > Please advise as to when Hal and I should expect this term sheet.
> > > Thank
> > > you for your continued courtesies in this matter.
> > >
> > > Have a good afternoon-
> > >
> > > Abby Ryan
> > >
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